

**Zoning Board of Adjustment  
August 4, 2016  
Case # 2016-18  
Beth and Rich Fersch  
Special Exception**

Present: Kevin Johnson Chairman  
Michael Thornton  
Joan Dargie  
Jason Plourde  
Rob Costantino

Lincoln Daley, Community Development Director

Absent: Len Harten  
Kathy Bauer, Board of Selectmen Representative

Secretary: Peg Ouellette

Beth and Rich Fersch, for property located at 24 Fox Run Road, Milford, NH, Tax Map 56, Lot 30, in the Residence R District, is seeking a Special Exception per the Milford Zoning Ordinances Article V, Section 5.04.2.A and Article X, Section 10.02.6 to allow an Accessory Dwelling Unit in a single family residence.

**MINUTES APPROVED ON 11/3/16**

Kevin Johnson, Chairman, opened the meeting by stating that the hearings are held in accordance with the Town of Milford Zoning Ordinance and the applicable New Hampshire Statutes. He then introduced the Board. He continued by informing all of the procedures of the Board. The list of abutters was read. None present.

Applicants came forward to present their case.

B. Fersch read her attachment contained in the packet "It Takes a Village" She said they were putting in an in-law apartment. She and her husband were using that and their son and wife were upstairs.

K. Johnson asked if Board had any questions. There were none. He noted on procedures they said they were not going to rent it out. However, special exceptions run with the property, not the owner. If they grant and applicants sold the property, buyer could rent it out. That fact not at issue here.

J. Dargie said an ADU cannot be rented out.

K. Johnson said it could.

J. Dargie said in the past they put conditions on ADUs for that.

K. Johnson said they had other issues with it that lead to those conditions. Normally they grant ADU without conditions. If it meets standard of ADU there was no reason from the Town's standpoint whether it was parent living there, or son, or rented to someone for income. It was irrelevant to granting the

special exception. He had a little difficulty understanding the drawings provided, since there was a lot of labeling on them. Were there three levels in the home?

B. Fersch said there were.

K. Johnson said basically the lowest of the three would be made into one living unit and other two was the other living unit?

B. Fersch said yes.

J. Plourde asked how they would access the lower level.

B. Fersch said lower had door out to the side yard and also seven stairs going up to the garage level – into a laundry room/breezeway and then into a garage.

M. Thornton asked if there were two areas of exit?

B. Fersch said yes. Did have it inspected. Because she was a home care provider they need a fire safety, life safety for that. There was life safety done on it.

K. Johnson asked if that was added to the application. It wasn't. He asked if she wanted to add a copy. She did so.

K. Johnson didn't see any e-mails received on this case. He opened the public comment portion of the meeting.

L. Daley asked applicant if the septic design was designed to handle the number of bedrooms.

B. Fersch said it was designed for three bedrooms.

L. Daley asked how many bedrooms they had.

B. Fersch said currently three in use.

L. Daley asked total number.

B. Fersch said four bedrooms, only three in use.

L. Daley expressed concern that if property was sold they might want to use four.

K. Johnson said they had had similar situations where what was a bedroom was relabeled as an office and therefore met the bedrooms requirement; but if it was sold it could be turned back into a bedroom. There is an inspection clause on sale of property with an ADU. It would have to be determined at that point, whether that could be used as a bedroom.

B. Fersch said in looking at what was considered a bedroom in cities around us she found in some cities a bedroom was a room with a closet. In one with a playroom downstairs it was a room with a closet. They will eventually put in a Murphy bed; they are currently sleeping on an air mattress. In process of all this, one of her clients brought in bed bugs and all their furniture was gone. They've redone floors, painted walls, etc. to make sure that problem didn't come back. In researching bedrooms, bedrooms are considered two adults in a room. Septic-wise will never have that many. .

L. Daley said going by DES regulations for septic design to handle set number of bedrooms.

B. Fersch said bedrooms were two adults.

L. Daley said he'd defer to the Board.

K. Johnson said they had new State regulations coming in but in this case it was not labeled as a bedroom and therefore met current definitions in the ordinance; if it were sold and converted it would require re-inspection which was in the ordinance. Issue to be addressed in the future.

B. Fersch said they replaced septic in 2013.

K. Johnson said it was still certified for certain level. It was one of those issues that was frequently a technicality but needed to be addressed.

B. Fersch asked what the inspection was, if sold.

K. Johnson said must verify that the ADU terminated and reincorporated into the house or that conditions granted for use as an ADU were being continued properly. Just to make sure that if the house gets sold, they haven't said they were going to change what they originally applied for. For example, instead of having one unit as level one and the other two as level two and three, now this will be one and two and the other is three. 99 percent of the time it is a matter of form. It is for reasons of health, safety and

welfare. Want to make sure too many occupants there and that everyone in town is safe and don't have building caving in on them.

K. Johnson read into record supplemental material provided by applicant, from NH Health & Human Services, Office of Operations Support, Bureau of Health Facilities Licensing, being a Life Safety Report for One to Three Person Placement Community Residences stating the residence was inspected and found to be in compliance with the appropriate fire codes, signed by Milford Fire Captain. Copy to be included in folder.

J. Plourde was looking at Sec. 4.02.A which is Acceptable Uses and Yard Requirements. ADU falls within that by special exception. Sec. 10.02.6, for Accessory Dwelling Unit. Based on presentation and information heard – was checking them off as they went through them. Only one ADU shall be allowed per property; primary dwelling unit shall be owner occupied; ADU shall not exceed 70 SF. Believed on one of the plans it showed 625 SF. ADU shall include no more than one bedroom. No additional curb cut. Connection between the common interior access between the primary dwelling unit and ADU was addressed. All ADUs must apply for compliance inspection when change of ownership occurs. Covering themselves in future for change in ownership. Just wanted to point that out these special criteria and checkmarks to go through as well. Felt confident.

M. Thornton said they didn't have measurement of how many square feet.

K. Johnson said there was a sticky note.

M. Thornton said 625 SF – pretty good.

K. Johnson asked for any other questions.

L. Daley said, looking at diagram on lower level refurbished area and family room. Circled is a bedroom?

B. Fersch said yes, family room/bedroom.

L. Daley referred to second top level, dead bedroom, client bedroom and master bedroom.

B. Fersch said they were not using one of them on second level. Using as den/playroom.

L. Daley asked if son and his wife had a child in with them.

B. Fersch said with them until client moves out, in five years.

L. Daley felt that was misleading.

B. Fersch said they had one child. When they bought the house they had 3 bedroom house with family room in the basement. Son in one room, she and her husband in another, and third was an office/computer room. When son became a teenager he wanted to be away from them. His room became the family room and bedroom for him. They had two empty rooms upstairs – an office and an exercise room. When her husband graduated from nursing school he decided to do home care and those two rooms became bedrooms again.

L. Daley expressed concern – not likely, but possible that septic system could fail. Not designed to handle that many bedrooms. Would hate to see that system fail in future because of additional people in the house down the road.

B. Fersch said there were fewer people in the house than in last three years. In last three years they had two clients, herself & husband, and son and his girlfriend. Six adults. One client gone; now five adults and a child.

K. Johnson said since grant stays with the property they have to consider how it will be used if they grant and applicants decide to move next week.

B. Fersch responded that it would be inspected.

L. Daley said yes, more often than not the real estate individuals.

K. Johnson said they could add a condition that septic system evaluation be done if number of bedrooms increased from three to four.

B. Fersch said septic tank was large enough for 4 bedrooms. Leach field would have to be extended.

K. Johnson said they could handle it by adding condition requiring an inspection if number of bedrooms changed from three to four, That protects the Town and enables applicants to use as presented this evening.

K. Johnson asked application to be read into the record.

A Special Exception, as specified in Article V, Section 5.04.2.:A of the Zoning Ordinance is requested to permit:

**Description of proposed use:**

Turn finished playroom -lower level into mother-in-law apartment with kitchenette & bathroom & exercise room.

**1. The proposed use shall be similar to those permitted in the district:**

Continues to be single family home with extended family permitted by code 5.03.2 ADU

**2. The specific site is an appropriate location for the proposed use because:**

The lower level has been used as a bedroom for the last 10 years – this was a refurbishment. It is within the footprint – existing – of home

**3. The use as developed will not adversely affect the adjacent area because:**

It continues to be the same family members in the home with the addition of a baby. No additional external cars – no change of use.

**4. There will be no nuisance or serious hazard to vehicles or pedestrians**

The same people will reside in the residence. We maintain the road. No additional cars – nuisance or hazards.

**5. Adequate appropriate facilities will be provided for the proper operation of the proposed use because:**

The home continues to be lived in by 5 adults – the well and septic are new and can handle this – The road is private and we maintain it including snow plowing & grading.

K. Johnson went through additional minimum requirements re ADU from Sec. 10.02.6 of the Ordinance, for applicant to respond. Based on applicant's responses it was determined that she felt the requirements were met.

K. Johnson asked for further questions for the applicant.

J. Plourde had question for the Chair. In the application, Sec. A, the wrong section was referred to. On front portion it said 5.04.2A, but in written portion Sec. A, it was 5.03.2. After checking, K. Johnson stated that on the application where it stated Sec. 5.03.2, it should say 5.04.2. He read into the record that they were so correcting the application. He asked applicant if she understood. She did. She corrected her copy.

J. Dargie asked, re Lincoln's questions about septic, in what category did that fit. Building code?

K. Johnson said meeting adequate facilities of the general special exception in 5.02.1E.

J. Dargie didn't know if it should be all applicable safety and fire codes.

K. Johnson said it could be either.

The Board moved on to discussion of the criteria. Again for the sake of time, he asked members to address the five criteria in 10.02.1 as well as the multiple criteria in 10.02.6.

R. Costantino said re Special Exception criteria, didn't have problem with any of them. Proposed used is still a single-family home with an ADU. Made sense when you had people living there to have that convenience. Site was appropriate. Use was a private residence. Not a lot of close neighbors; on a private road. Did not see it adversely affecting adjacent area because of that. Didn't see nuisance to vehicles or pedestrians because it was single residence. Adequate facilities, they discussed septic system and inspection and evaluation of those for changes to usage permitting it. All five are good.

K. Johnson said he didn't think they needed to individually go through criteria in Sec. 10.06.A since that was primarily testimony by the applicant, but did need to cover requirements in Sec. 10.02.A.2.

R. Costantino said the ADU didn't alter the character or appearance of the single-family residence. They had talked about that. There were no outside changes. It was intended to be a secondary access to principal single-family dwelling. They discussed that was the intention. Re ADU shall not impair

essential character or reasonable use and enjoyment of property in the neighborhood, didn't believe that was the case because it was kind of isolated property. Re adequate facilities, he asked applicant if they had their own driveway. B. Fersch said they did and they owned to the middle of the street – private road, which they maintain. They have a two-car garage and two spaces.

R. Costantino said any necessary additional entrances or exits shall be located to the side – they discussed there are two entrances to the ADU, one walk-out to the yard and one short stairway to the garage. Those were all met.

M. Thornton pointed out that there were windows, if the ADU was half submerged underground, there were windows that gave qualified egress.

B. Fersch said yes, those windows were replaced. There was a playroom with a big picture window. It met fire and safety code. That was one of the things they had to change in the bedroom for client.

J. Dargie agreed with all Rob had said on both sets. Only concern was number of bedrooms. There was one child there. In five years, there could potentially be 4 if son had more children. She asked what the condition was as far as the inspection.

K. Johnson said the condition hadn't been determined. Could be discussed.

J. Dargie said she was okay with everything, but concerned about the number of bedrooms.

K. Johnson said it was jumping ahead, he would recommend a condition to grant be added approximately stating that if the use of the dwelling changed from 3 to 4 bedrooms, that a septic system evaluation be done.

L. Daley said what may happen, they may have a licensed septic designer to design a system – not build it, but look at it, in case it fails.

M. Thornton said better to be ahead of curve. It could be difference between replacing entire leach field or extending it.

B. Fersch said if she saw it starting to fail and if septic comes out and says there is backflow they will fix it and extend it. They have funds put away for it. They already dug a well. There was money there to extend septic if needed.

M. Thornton said that covered everything.

J. Plourde agreed with everything said by Board. Looking at 10.02.1E, that was where he was going to mention the condition. Agreed with everyone else re condition for evaluating. Looked favorably on it with the condition.

K. Johnson agreed. Proposed use was similar. It was permitted. There were other ADUs in Res. R. They had discussed other conditions. Had brief discussion on adding condition. He would like to see re, 10.02.1e, adequate appropriate facilities, that if the number of bedrooms was changed from 3 to 4 a septic system evaluation be performed by a licensed septic designer.

B. Fersch asked if that was something she should do now.

K. Johnson said didn't see need, as it currently stood. But if they decided to move and next person said they needed to rent it out and had to use all those bedrooms, that is when that would need to be done.

J. Dargie said, or her son had twins.

K. Johnson said so many things that could occur.

B. Fersch said they baby the septic.

**Condition:**

K. Johnson requested a motion that pursuant to Sec. 10.02.1e, if the number of bedrooms in use changes from three to four, a septic system evaluation be performed by a licensed septic designer.

J. Dargie made motion.

R. Costantino seconded.

**All voted in favor of the condition.**

K. Johnson proceeded to vote on the special exception criteria.

**Is the Special Exception allowed by the Ordinance?**

J. Dargie – yes; R. Costantino – yes; J. Plourde – yes; M. Thornton – yes; K. Johnson – yes  
**Are the specific conditions present under which the Special Exception may be granted?  
(Including Sec. 10.02.1.a-e and 10.06.a1 & 2)**

J. Plourde – yes, with condition; J. Dargie – yes, with condition; R. Costantino – yes, with condition;  
M. Thornton – yes, conditionally; K. Johnson – yes, with condition

K. Johnson asked for motion to approve the Special Exception requested in Case #2016-18 for allowance of an Accessory Dwelling Unit in a single-family residence located at 24 Fox Run Rd, Milford NH, Tax Map 56, Lot 30 with the condition previously approved.

J. Dargie made a motion to approve Case #2016-18 with condition previously approved

R. Costantino seconded the motion.

**FINAL VOTE:**

**A yes vote was to grant the Special Exception.**

**M. Thornton – yes**

**J. Plourde – yes**

**J. Dargie – yes**

**R. Costantino – yes**

**K. Johnson – yes**

K. Johnson informed applicants they were unanimously approved for the special exception with the condition regarding bedroom use. He reminded them of the 30-day appeal period.

K. Johnson called for short recess before beginning next item on the agenda.